THE BELL TELEPHONE CASE,

Op nion Handed Down By Judge Simonton in the Circuit Court of Appeals.

SENT BACK TO THE CIRCUIT COURT

The Injunction Against the City to Be Modified-Justice Brawley Dissents From a Portion of the Opinion. Other Cases Disposed Of.

Judge Simonton, in the United States Circuit Court of Appeals, yesterday af-tersoon handed down an opinion in the ase of the city of Richmond against the Southern Bell Telephone and Telegraph Company, in which, after reviewing the for a modification of the injunction principles laid down in his opinion. The mong the citizens than any for many y able counsel on either side. The full

TEXT OF THE OPINION. City of Richmond, appollant, vs. South-in Bell Telephons and Telegraph Com-my, appellee. Appeal from the Circuit ourt of the United States for the East-in District of Virginia, at Richmond, raued November 12, 18%. Decided Feb-lery I, 18%. Before Simonton, Circuit doze and Brawley and Purnell, District others. naries V. Meredith for appellant; Hill ter, of Leake & Carter, and A. L. linday, of Stiles & Holiday, for ap-

Phis case comes up on appeal from the cree of the Circuit Court of the United ates for the Eastern District of Vir-

w and over, under, or across the navi-tible streams or waters of the United ates; but such lines of telegraph shall so constructed and maintained as not obstruct the mavigation of such reams and waters, or interfere, with e ordinary travel on such military or set roads.

post roads."
"Section 598. Before any telegraph
company shall exercise any of the powers
or privileges conferred by law such company shall file their written acceptance
with the Postmaster-General of the restrictions and obligations required by
law."

THE ORDINANCE.

THE ORDINANCE.

On 14th December, 1834, the City Council of Richmond repealed the ordinance of 28th June, 1884, granting these privileges to the Southern Bell Telephone and Telegraph Company, to take effect twelve months after its approval. And 18th September, 1836, the same City Council passed another ordinance as to the Joint use of poles crected in the streets and alleys of the city of Richmond, for the support of wires used in connection with the transmission of electricity.

The first section of this ordinance provides that all poles now erected in the streets or alleys of the city of Richmond for electric wires, except such as support wires required by city ordinances to be removed and run in conduits, shall thereafter be allowed to remain only on terms and conditions thereinafter set forth.

The second section provides that no pole now erected for the support of telephone wires shall remain on any street in said city after lish Descember, 1885, unless the owner or user of such pole shall first have petitioned for and obtained the privilege of erecting and maintaining poles for telephone purposes in accordance with the conditions of this ordinance and such others as Council may see fit to impose, if such owner fail to obtain such privilege and fall or neglect to remove the poles and restore the street to its former condition, he shall be liable to a fine not more than \$500 and not less than \$100 for every pole so remaining. Each day's failure to be a separate offence. Then follows a number of sections imposing most stringent conditions, placing the whole matter within the centrol of the city and its officers, reserving the right in the City Council at any time to put other restrictions and regulations as to the erection and use of such poles, and from time to time to require the removal of them and the wires to be run in conduits. On 16th September, 1856, another ordinance was passed requiring the removal of poles and wires from overhead in certain streets and for the construction and using conduits in certain streets. This ordinance was enforceable under heavy penalties, with the provision also that any comoany getting the privilege of putting in these conduits, must make them 10 per cent, larger than is needed for their use, so that the city might run its wires free in such conduits and any other comoany may use them for an agreed compensation, or one to be fixed by arbitrators.

agreed compensation, or one to be fixed by arbitrators.

Threats having been made to carry ordinances into effect, the complainant filed its bill praying an injunction. It rests its right to use the streets and alleys of the city of Richmond for the purposes of its business under Article I, Section 8, of the Constitution of the United States and the act of Congress of 18%, and denies that in such use it can be prevented or controlled or be in any way dependent upon an ordinance or any ordinances of the City Council.

The prayer for an injunction is in these words:

cords: "Phat said city and all others, its That said city and all others, its agents and employes, may be restrained and enfoined from removing or interfering its poles and wires in said city, and from interfering with the right of your orator to use said poles and wires, and that all proceedings by said city or its agents and all others to prevent your orator from continuing renewing, repairing and extending its lines, wires and poles in, along and over the streets and alleys of the said city, and

15 Minutes Sufficient

to make most delicious tea biscuit with Royal Baking Powder.

to inflict fines and penalties on your orator for so doing, may be restrained and
enjoined; that the right of your orator
to use said poles and wires and to carry
on its said business along and over the
streets of the said city be declared and
defined; that the ordinances of said city
of the 14th of December, 1894, and of the
loth September, 1895, so far as they undertake to prevent your orator from
maintaining and using its lines, poles and
wires over and along the streets and
alleys of the city of Richmond, from repairing, renewing and extending its said
poles, wires, lines and routes as its business may require, may be declared ruli
and void.

THE DEMURER.

iness may require, may be declared null and void.

THE DEMURER.
Upon the filing of the bill an interlocutory infunction was granted.

The bill was first m t by demurrer. The denurrer set up these defences:

1. As to the equity of the bill.

2. That the act of Congress of 1866, applies only to telegraph companies and not to companies like the complainant.

3. That the act of Congress even if it does apply to complainant does not give it any right to erect its poles and wires along the streets of Richmond, without the consent of the city, subject to reasonable regulations as to the routes, position and number of the poles and to pay for use of the street.

4. That if this is the effect of the act of Congress it is unconstitutional.

5. That the ordinance of 1884, constitutes a binding contract between complainant and the city of Richmond, with a power of rescission by repeal in the city Conneil. That this power was given by the sinute of the State of Virginia and was properly exercised.

The demurrer was overruled and the de-

Simonton. Circuit Judge:

This case comes up on appeal from the circuit Court of the United States for the Eastern District of Virgina and the Court of the United States for the Eastern District of Virgina and comparing the State of New York as a telephone and telegraph company. It is engaged in the business of a and operating telephone lines in and through the States of Virgina. Sworth Carolina, and through the States of Virgina, West Virgina, Sorth Carolina, and through the States of Virgina, West Virgina, Sorth Carolina, and through the States of Virgina, Sworth Carolina, and through the States of Virgina, West Virgina, Sworth Carolina, and through the States of Virgina, West Virgina, Sworth Carolina, and the conditional states and alleys of said city numerous poles and wires for this purpose. Was theory of the Carolina and alleys of said city numerous poles and wires for this purpose. Was theory of the Carolina and alleys of said city numerous poles and wires for this purpose. Was theory of the company of the city of Richmond for authority to erect its poles and run to wires alone the streets and alleys of said city numerous poles and wires for this purpose. Was the said of the City of State of Sta

under the act of Congress of 1866, which applies to telegraph companies, and not to a telephone company as complainant The seventh, eighth and ninth deny

The seventh, eighth and ninth deny that even if complainant comes within the act of 1895, it can be protected, unless it is engaged in interstate commerce business; and only as to such business, and denies that it is protected in its local business. They also deny that there is anything in the contract with the Western Union Telegraph Company which puts complainant in interstate commerce business, or within the protection of Section 8, article 1, of the Constitution of the United States.

The tenth and eleventh assignments assign error as to the scope of the injunction, as it enjoins the city from interfering with the infra State and local business of the complainant, and a right to erect its poles and stretch its wires, without any control on the part of the city.

At the lar the appellant declared that

without any control on the part of the city.

At the bar the appellant declared that the constitutionality of the act of Congress of 1895, was recognized and admitted.

That all streets which are letter carrier routes are post roads of the United States.

That under the act of 1865, a telegraph company can obtain a right of way for its poles and wires through a city and along its streets, against the wish of the municipality.

ipality, decisive questions raised in this First. Does the complainant come with the protection, and is it entitled to the tylleges contained in the act of Con-ess of 1867.

gress of 1896?

Second, 1f it comes within the provis-ions of that act, how far has it limited and restricted itself by accepting the provisions of the ordinance of the city of

Third. To what extent does the protection of the act of 1895 go? Does it make the company accepting it free of the control of the municipality in which

The act of Congress of 1886, in terms, speaks of telegraph companies. Do these words include telephone companies?

The telegraph and telephone both communicate messages by means of electricity over wires, for longer or shorter distances. The telegraph communicates these messages by sound of instruments, the telephone by the human voice usuality. Both depend upon electricity for their action. Each is but a form of une—the product and result of the same principle. The names are only used to distinguish the method of communication.

SOME CITATIONS.

distinguish the method of communication.

SOME CITATIONS.

In Enghiad, in the case of AttorneyGeneral vs. Edison Telephone Company,
6 Q. B. Div., 244. Stephens, J., in a
carefully prepared and elaborate discussion, says: "I do not think it necessary
to express any opinion on a controversy
which is more scientific than legal, and
perhaps more properly metaphysical or
reactive to the meaning of words than
scientific as it seems to turn upon the
nature of identity in relation to sound,
it is enough to say that, whatever he the
merits of the controversy, it does not apocar to us that the fact, if it is a fact
that sound itself is transmited by the
telephone, establishes any material distinction between telephonic and teleter to communication, as the transmission, if it takes place, is performed by a
wire acted on by electricity."

In the Wisconsin Telephone Company
we city of Oshkoch, & Wis. 22 this case

sion, if it takes place, is performed by a wire acted on by electricity."

In the Wisconsin Telephone Company vs. City of Oshkosh. 62 Wis. 32, this case was cited with full approval, and the doctrine asserted that, in contemplation of law, a telephone and telegraph company are one and the same. In the case of the Chesapeake and Potomac Telegraph Company vs. B. s. O. Telegraph Company, 66 Maryland, 410, the court of last resort of that State quotes with approval the the English case above quoted, and say further: "It is clear if we take the term telegraph to mean and include any apparatus or adjustment of

instruments for transmitting messages or other communications by means of electric currents and signals, that term is comprehensive enough to embrace the telephone."

telephone."
The same doctrine is clearly and fully expressed in Duke vs. Central N. J. Telephone Company, 53 N. J. Law Reports, 341. The court quotes the language of Bell in his application for a patent, set out in the Telephone Cases 126 U. S., 1. He says: "What I claim is the method or an apparatus for transmitting vocal or other sounds telegraphically as herein described, by causing electrical undulations similar in form to the vibrations of air accompanying said vovibrations of air accompanying said vo-

vibrations of air accompanying said vo-cal sounds."

And so also Brown, J., now Mr. Justice Brown, in Cumberland Telephone and Telegraph Company vs. United Electric Railway Company, 42 Fed. Rep., 273, says: "We see no reason to doubt the position assumed by the complainant that a tele-phone company is a telegraph company. The complainant, therefore, comes with-in the protection, and is entitled to the privileges, of the act of 1866.

in the protection, and is entitled to the privileges, of the act of 1896.

The next question is, if the complainant is within the protection and enjoys the privileges of the act of Congress of 1896, how far has it limited and restricted itself by accepting the provisions of the ordinance of the city of Richmond.

In June 1884, the ordinance was passed granting the right of way throughout the city of Richmond to this complainant. At that time it had not accepted the provisions of the act of 1896, and in no other way could it get the right to enter the city but by permission was given subject to the right of the City Council. The permission was given subject to the right of the City Council to revoke it at any time after twelve months and on 14th December, 1896, it was revoked. In the meantime, 1896, the complainant, recognizing the uncertainty of its tenure, concluded to put the enjoyment of its rights on higher grounds and under paramount authority. Can it now be said that the complainant cannot avail itself of the privileges of the act of 1896, and must look for them to the City Council, because formerly the city granted privileges which it has revoked? Can a contract, revocable and revoked by one party still bind the other party after its revocation?

The complainant is not now using the post roads of the city of Richmond under any grant from the City Council. The council themselves, by their own act, have put an end to any such contract with the complainant. But for the act of Congress, it has the right to construct, maintain and operate lines of telegraph over and along any of the postroads of the United States, and when an effort is made, or threatened, to deal with it as a trespasser, it can refer to that act.

The next question is: To what extent does the protection of the set of Congress, it has the right to construct, maintain and operate lines of telegraph over and along any of the postroads of the United States, and when an effort is

the United States, and when an effort is made, or threatened, to deal with it as a trespasser, it can refer to that act.

The next question is: To what extent does the protection of the act of Congress 20. Does it free the company accepting its provisions from any control of the municipality through whose streets it may go?

TO WHAT EXTENT.

This act of 1866 authorizes the company accepting its provisions to maintain and operate its lines on any postroad. The act itself prescribes a condition. The lines of telegraph must not interfere with the ordinary travel. It is, therefore, subordinate to the public use. The privileges of this act, "like any other franchise, are to be exercised in subordination to public as to private rights. (St. Louis vs. Western Union Telegraph Company, 148 U. S., 160.) These privileges must be enjoyed, subject to the lawful exercise of the police nower. In Western Union Telegraph Company, Protected by the act of 1866, and engaged in husiness as a common carrier, was held to be a subject of taxation by a State. The Supreme Cours uses this language: "It never could have been intended by the Congress of the United States, in conferring upon a corporation of one State the authority to enter the territory of any other State and erect poles and lines therein, to establish the proposition that such a company owed no obedience to the laws of the State into which it thus entered."

In the case of St. Louis vs. Western Union Telegraph Company, supra, echarge by a city for poles was held valid against this same company, the only limitation being that the charge be not unreasonable. In Western Union Telegraph Company that telegraph Wires be placed in conduits was sustained. Streets and alleys in a city are the public property placed ender the supervision and control for the benefit of the whole public, those living upon and those passing through such streets and alleys. And in the exercise of this supervision, which is the police power, they must see to it that the rights of the public and of priva

public and of private persons are not infringed.

The complainant, under the act of Congress, has the right to use these highways. Neither the State nor any municipality can prevent it. But this use must be subordinate to the rights of the public, must not endanger those rights. And as the municipality is the guardian of the public in this regard, it can establish such lawful provisions as may regulate the use, always, however, avoiding such regulations as will make the use burdensome and intolerable, and so practically impossible. (City of Philadelphia vs. Western Union Telegraph Company, 82 Fed. Rep. 797.)

This being so, the injunction granted by the Circuit Court is too broad in its language and effect. There should have been the recognition of a proper exercise of the police power by the municipal cor-

INTOLERABLE AND IMPOSSIBLE.

INTOLERABLE AND IMPOSSIBLE.

The only remaining question is, do the ordinances of the city of Richmond prescribe regulations which will make the use burdensome and intolerable, and practically impossible?

"It belongs to the legislature to exercise the police power of the State, subject to the power of the courts to adunde whether any particular law is an avasion to rights secured by the Constitution." (Mugler vs. Kansas, 122 U. S., 625). "The legislature may not, unfer the guiss of protecting the public interests, arbitrarily interfere with pricate businesses of or impose unusual and annecessary restrictions upon lawful occupations. In other words its determination as to what is a proper exercise of its colice power is not final or conclusive, out is subject to the supervision of the ourts." (Lawton vs. Steele, 152 U. S., 37) If this be the case with regard to he Legislature, a fortior it applies to a nunicipal corporation, the creature of the egislature.

On examination of these ordinances it will be seen that as a condition precedent.

municipal corporation, the creature of the legislature.

On examination of these ordinances it will be seen that as a condition precedent to the use of the streets of Richmont, a petition must first be filed for the purpose of erecting and maintaining poles and wires for telephone purposes in accordance with the conditions of that ordinance, and such other conditions as the Council may seen fit to impose. (Ordinance, and such other conditions as the Council may seen fit to impose. (Ordinance approved left September, 1895.) The 7th section of this ordinance expressly reserves to the City Council the 1121 to put at any time other restrictions and regulations. And the whole lenor and effect of the ordinance is to put the company absolutely under the control of the city. And the trans of the ordinance are enforcible under heavy pensities. The next ordinance, the one providing for wires in conduits, after providing that the City Council may compel the removal of wires from poles overhead in certain streets and the putting them in conduits in certain streets, under a penalty of not less than \$100 or more than \$500 for each pole per week, provision is made for permission to build conduits of sufficient canacity to accommodate the wires in such streets and to provide for an increase thereof to at least the extent of 100 per cent. the increase of space not to be occupied by the party building the conduits without the consent of the Council, the onduit to be used for the wires of the Council free, and the City Council to allow any other person or corporation to use such conduit for wires upon 224-ng commensation in the mode prescribed by the City Council. This privilege of ouiliding and owning conduits to last na longer than fifteen years, at the end of which time the city may put such other restrictions, conditions and charges as it may see fit, or may order their removal at the expense of the owner. The charge for using or owning any wire in any such conduit shall be for each year until January 1, 1900, \$2.00 per wire

with the right to impose any others which Council may see fit. Now it goes without saying that if the complainant, notwithstanding its claim of protection under the act of Congress of 1886, were willing to file a petition to the City Council for the privileze-of using its streets and alleys and in that petition agreed in consideration of its grant, to abide by any present or future condition, regulation or restriction the Council may impose, this would be a binding contract and would control the complainant. R. R. Company vs. Ryan, 133 U. S. 42. Whatever the rights of the complainant may have been under such a stipulation, it would surrender them and come within the absolute domination of the City Council. The courts could not review any ordinance to discover if it be within the lawful exercise of the police power, for the complainant would be bound by its contract to obey the ordinance, be it a police regulation or not.

These conditions, regulations and restrictions already prescribed by the City Council appear to be stimulated by a desire to oppress and control, perhaps defeat, the existence of the complainant and so are not the lawful exercise of the police power.

Let the case be remanded to the Circuit with the right to impose any others which Council may see fit. Now it goes with-

so are not the lawful exercise of the po-lice power.

Let the case be remanded to the Circuit Court with instructions to modify the terms of the injunction therein granted, so that it may conform to the principles declared in this opinion, the costs of the case to be equally divided between the parties.

parties.

Brawley, District Judge:
I concur in the result, but am not inclined to assent to so much of the opinien as holds that a telephone company,
such as is described in this case, and
whose business is local in character, is
within the purview of the act of Congress
of July 14, 1866, relating to telegraph com-

TO TAKE AN APPEAL.

The City is By No Means Satisfied With the

Decision.

City Attorney C. V. Meredith was seen by a Times reporter last night. He said the decision was by no means satisfactory to the city and the case would be taken to the United States Supreme Court

taken to the United States Supreme Court at Washington on a writ of certiorari. This will be done at the earliest practicable moment.

The opinion handed down by Judge Simonton is construed to mean that, while the city has no right to drive the Bell Company out of Richmond, it has authority to exercise police jurisdiction as far as prescribing rules and regulations regarding wires and poles are concerned. But, the Court holds that ordinances adopted regulating the use of poles and wires for the Standard Telephone Company (now the Richmond Telephone Company) would be unjust and harsh if applied to the Bell. This being the case, and the opinion of the Court not describand the opinion of the Court not describ-ing definitely the powers of the city, it is deemed best to take the case to the high-est tribunal in the country.

MR. GUIGON'S VIEWS,

MR. GUIGON'S VIEWS,
Mr. A. B. Guigon, general counsel for
the Richmond Telephone Company, when
asked for his opinion of the decision,
said: "The Richmond Telephone Company is not a party to the suit and it
would not be in good taste for me to express an opinion."

Being asked what the practical effect
would probably be, Mr. Guigon repiled
that the decision would probably be barren of direct results, as in all probability
the city would appeal to the Supreme
Court, and that meanwhile the legal status would remain unchanged.

"Indirectly, however," he said, "we feel
that the results will be most beneficial
to the home industry which is now serving the public. After all, the matter is in
the hands of the public, which has given
us, in a constantly increasing subscripproval of the Beil Company's methods
and defiance of the city government. This
contirmation of the decision of the Circuit

States.

No. 240.—E. C. Crowther, Joseph McPhersom, M. L. Weilley, assignees, &c.
appellants, vs. Appeal from Circuit
Court. Western District of Virginia, at
Harrisonbours. Opinion by Judge Simontout. Allrimed.
No. 23L.—W. Vance Brown, Potter M.
Brown et al. appellants, vs. Cranberry
Iron and Coal Company, appellee. Appeal from Circuit Court, Western District
of North Carolina, at Asheville. Opinfon by Judge Brawley. Announced by
Judge Goff. Affirmed.
No. 23L.—W. Vance Brown, Potter M.
Brown et al. appellants, vs. Cranberry
Iron and Coal Company, appellee. Appeal from Circuit Court, Western District of North Carolina, at Asheville. Opinfon by Judge Brawley. announced by
Judge Goff. Affirmed.
No. 23L.—Township of Ninety-six. county
of Abbeville, State of South Carolina,
plaintiff in error, vs. George W. Folsom,
defendant in error, and by John K. Shields, of
Morristown, Tenn., and L. W. Parker, of
Gornelle, S. C. for defendant, in error,
and cause submitted.
No. 23L.—W. Township of Ninety-six. county
of Abbeville, State of South Carolina,
plaintiff in error, and by John K. Shields, of
Morristown, Tenn., and L and defiance of the city government. This confirmation of the decision of the Circuit Court will, we believe, intensity the in-dignation of the people of Richmond and cause them in greater numbers than ever cause them in greater numbers than ever before to withdraw their patronage from the company which has so long ignored them and make them come over to us with practical unanimity. The people of Richmond are conservative and slow to anger, but there is a limit to their patience, and this the defiant monopoly are

nnding out to their sorrow."
COLONEL M'CLUER SILENT. Colonel C. E. McCluer, district superintendent of the Bell Telephone Company was asked inst night by a Times repor-ter for his opinion regarding Judge Si-monton's decision, but he declined to ex-press any views on the question.

The matter was freely discussed last night by members of the Council, the obinion generally being that the Bell Company so far has the best of the con-

OTHER CASES.

Opinion in the Keeley Institute Case Hand ed Down and Court Below Reversed-

Case No. 238, in error to the Circu Case No. 238, in error to the Circuit Court of the United States for the Eastern District of Virginia, at Richmond, is that of S. G. Glover, plaintiff in error, against the National Fire Insurance Company of Baltimore, defendant in error.

About May 16th, 1832, Dr. S. G. Glover, the plaintiff in error, bought from G. H. Jackson & Co. of Cairo, Ill., a house and int at Ashland, about twenty miles from Richmond, Va. The house was at that time occupied by Mrs. Baldwin, a sister of Jackson, who had "some boarders or roomers there," and was insured in the defendant company through the agency of S. H. Pulliam & Co., who were the general agents of the insurance company, having power to write or issue policies without sul mitting the risk to the home office, which was at Baltimore. The Pulliams were relatives of the Jacksons, and to some extent looked after their interests. Hill Carter, Esq., a member of the bar of Richmond, being their attorney who prepared the deed of conveyance from Jackson to Glover and forwarded the same for execution to Cairo.

Without waiting for the return of the deed of conveyance, and after the sale was agreed upon, Glover was let into possession of the property and Immediately established a Keeley Institute.

NO APPLICATION SIGNED. ourt of the United States for the East

session of the property and immediately established a Keeley Institute.

NO APPLICATION SIGNED.

It does not appear that the Jacksons had ever signed any application for insurance or furnished any description of it. Carter, as altorney for the Jacksons, desiring security by way of insurance for the deferred payments, went with Glover, who was a cilizen of the State of Nebruska, to Pulliam's office and introduced him, the object of their visit being to secure the payment of the amount due on the deferred motes to the Jacksons, in the event of a loss by fire, and it was considered better to issue a new policy instead of trasferring the old one. It was probably some day between May 10 and May 19th, and on the 22d of May a letter was received from Samuel H. Pulliam & Co., enclosing a policy for Dr. S. G. Glover, endorsed, addressed to Hill Carter.

The building was destroyed by fire on February 3, 1896.

The action was originally brought in the Circuit Court for the city of Richmond, and removed by the defendant company, by petition, to the United States Circuit Court for the Eastern District of Virginia, where it came on to be heard in due course, resulting in a verdict for the defendant, where it came on to be heard in due course, resulting in a verdict for the defendant, the jury stating that they found for the defendant "under the instructions of the court."

The testimony clearly showed that the house was used for the reception, entertainment and treatment of patients in a Keeley Cure establishment, and the proof was that the rate of premium charged for dwelling-houses was considerably less than that for such establishment, which were rated as hospitals.

Whether the agents of the company knew at the time the policy was written that the premises were being occupied as a Keeley Cure establishment was a question of fact to be determined by a jury under proper instruccions of the court.

When a case proper for the determination of a jury has been submitted to it with all the evidence legally pertaining thereto, t NO APPLICATION SIGNED.

The judgment of the court below is reversed, and the case remanded for a new trial. IMPORTANT LIEN CASE.

In case No. 240, which is an appeal from the Circuit Court of the United States for the Western District of Virginia at Har-risonburg, by E. C. Crowther et al. against the Fidelity Insurance. Trust and Safe Deposit Company, trustee, et al. appellees, the opinion was handed down

by Judge Simonton and the decree of the Circuit Court is affirmed.

The Shenandoah Iron Company, a manufacturing corporation of the State of Virginia, became insolvent. The trustee of a first haortrage on the property of the company filed a bill for the foreclosure thereof, under which receivers were appointed and, on a full hearing, obtained its decree for aic. Crediters were called in who submitted proofs of their claims to a special master appointed by the court. The master made his report.

The mortgage hears date April 1, 1881, and secures bonds bearing the same date, to the amount of 550,000.

In his report the master stated the claims in classes according to his views of their priority.

Among these were certain claims for labor and supplies which exited against the defendant company prior to the appointment of the receivers, but subsequent in date to the mortgage.

CLAIMS PRIORITY.

CLAIMS PRIORITY.

quent in date to the mortgage.

CLAIMS PRIORITY.

The claimants insisted that these claims had priority over the mortgage debts, and that the proceeds of sale should be applied to their extinction before any part of the mortgage debt could be paid. They rest their position on the Acts of the General Assembly of the State of Virginia, passed in 1877 and 1873, and on section 285 of the Code of Virginia.

The Circuit Court overruled this claim of priority, holding that the statutes of Virginia were unconstitutional and void, and that section 285 of the Code of Virginia, as to these claims, under the circumstances of this case, was also void.

Exceptions were taken and assignments of error made. The question here to be decided is this:

As the law of Virginia stood at the date of the passage of the Code of 1887, had claims for labor or supplies against manufacturing companies, a lien prior to the lien of an antecedent recorded mortgage.

After citing a number of cases and opinious Judge Simonton concludes thus:

Inasmuch as to displace the vested len of the mortgage of the Sheandoah Iron Company of 1881 by the retroactive language of section 285 of the Code of Virginia would be to impair the obligation of that contract, it is void.

The decree of the Circuit Court is affirmed with costs.

SUMMARY.

No. 222—D. G. Savers. Geo. W. Harmon (1997).

In the decree of the Circuit Court is affirmed with costs.

SUMMARY.

No. 222.—D. G. Sayers, Geo. W. Harmon et al., appellants, vs. Wm. H. Burkhardt et al., appellees. Appeal from Circuit Court of West Virginia, at Charleston. Opinion by Judge Goff. Affirmed.

No. 222.—Ex parte, Samuel W. Vance, petitioner, piaintiff in error, vs. Edward B. Wesley, respondent, defendant in error. In error to the Circuit Court of South Carolina, at Charleston. In Tindal et al. vs. E. B. Wesley, Opinion by Judge Goff. Affirmed.

No. 234.—The Charlotte Oil and Fertilizer Company, plaintiff in error, vs. Harting and Fesel, defendant in error. In error to the Circuit Court, Western District of North Carolina, at Charlotte. Opinion by Judge Brawley. Affirmed.

No. 237.—George S. Briggs et als., appellants, vs. C. Richard Taylor, appellee. Appeal from the District Court, Eastern District of Virginia, at Norfolk. Opinion by Judge Purnell, announced by Judge Simontin. Affirmed.

No. 240.—E. C. Crowther, Joseph McPherson, M. L. Welfley, assignees, &c., appellants, vs. The Fidolity Insurance, Trust, and Safe Deposit Company, trustee et al., appellees. Appeal from Circuit Court. Western District of Virginia, at Harrisonburg. Opinion by Judge Simontin. Affirmed.

No. 243.—W. Vance Brown, Potter M.

acter that allowed no time for those who followed the tenets of temporal better-ment to attend to the safey of their souls; of oppression that smothered the people's souls and forced them in desperation to break forth in rumblings of anarchy. Rev. Guthrie pointed to Christianity, followed insistently and unselfishly as the panacea, for the world's downward

ty in intelligently diagnosing profound so-cial ills. It was eloquently delivered and its points were wrought lucidly and with

GRAND CHANCELLOR HERE. He Pays an Official Visit to Marshall Lodge

He Pays an Official Visit to Marshall Lodge Knights of Pythias.

The Grand Chancellor of the Knights of Pythias of Virginia, Mr. H. M. Dar-nall, of Roanoke, paid an official visit to Marshall Lodge, Knights of Pythias, last night. Mr. Darnall was escorted last night. Mr. Darnall was escorte seived with the honors belonging to his position, Past Grand Chancellor B. T Crump presided and introduced Mr. Dar sall, who made an address to the mem-bers of the order that was replete with interest to all. Mr. Durnall dwelt at length upon the two main features of (he order the endowment (insurance) rank and the uniform rank. He gave a succinct history of the origin of the order, and although it was founded just thirty-four years ago it is to-day the strongest order numerically on the face of the globe less than one hundred years old. Mr. Darnall exemplified the unwritten Mr. Darnall exemplified the unwritten work of the order in a careful manner, which was closely watched by the membership. Mr. Darnall was followed in his address by Hon. C. T. Bland, who made a stirring address of about ten minutes, in which he dwelt upon the principles of the organization and enumerated its many strong points. Judge David C. Richardson, of this city, one of the supreme representatives, delivered an interesting and appropriate address, after which the members were introduced to the Grand Chancellor. Later the visitors were extentioned at a spread at Hulcher's. tertained at a spread at Hulcher's.

There was a very large turnout of members of the lodge, there being also a number of members of other lodges in attendance. The speeches were all of

a high order and much enjoyed, Smith-Glover.

BERRYVILLE, VA., Feb. 1.-Special.-Miss Ida Glover was quietly married to Mr. Herbert Mackeldin Smith, of Staun-ton, at the residence of her mother, Mrs. Eugenia Glover, at 7:30 A. M. to-day, Only a few friends and the relatives of the couple witnessed the ceremony, which was performed by the Rev. Edward Wall,

rector of Christ Episcopal church.
Among others present were Miss Eugenia Swoon, of New York; Mr. Julian Jenkins, of Baltimore, and Judge William S. Cole and wife of Washington. The newly wedded couple drove to Summit Point where they took the train for an exten-

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Mrs. Pinkham Asks Women to Seek Permanent Cures and Not Mere Temporary Relief From Pain.

Special forms of suffering lead many a woman to acquire the morphine habit. One of these forms of suffering is a dull, persistent pain in the side, accompanied by heat and throbbing. There is disinclination to work, because work only increases

troubles; she has others she cannot bear to confide to her physician, for fear of an examination, the terror of all sensitive, modest women.

The physician, meantime, knows her condition, but cannot combat her shrinking terror. He yields to her supplication for something to relieve the pain. He gives her a few morphine tablets, with very grave caution as to their use. Foolish woman! She thinks morphine will help her right along; she becomes its slave !

A wise and a generous physician had such a case; he told his patient he could do nothing for her, as she was too nervous to undergo an examination. In despair, she went to visit a friend. She said to her, "Don't give yourself up; just go to the nearest druggist's and buy a bottle of Mrs. Lydia E. Pinkham's Vegetable Compound. It will build you up. You will begin to feel better with the first bottle." She did so, and after the fifth bottle her health was re-established. Here is her own letter about it:

"I was very miserable; was so weak that I could hardly get around the bouse, could not do any work without feeling tired out. My monthly periods had stopped and I was so tired and nervous all of the time. I was troubled very so tired and nervous all of the time. I was troubled very much with falling of the womb and bearing down pains. A friend advised me to take Lydia E. Pinkham's Vegetable Compound; I have taken five bottles, and think it is table Compound; I have taken five bottles, and think it is the best medicine I ever used. Now I can work, and feel

like myself. I used to be troubled greatly with my head, but I have had no bad headaches or palpitation of the heart, womb trouble or bearing-down pains, since I commenced to take Mrs. Pinkham's medicine. I gladly recommend the Vegetable Compound to every suffering woman. The use of one like myself. I used to be troubled greatly with

pound to every suffering woman. The use of one bottle will prove what it can do."—Mrs. Lucy Prastry Derby Center, Vt.

H. Swineford, President. S. G. Fairbank, Vice-President. J. H. Southall, Cash'r, DIRECTORS.

L. F. Sullivan, Chas. Lorraine, A. C. Becker, H. Swinetord, S. G. Fairbank, C. D. Larus, F. W. Danner. THE DIME SAVINGS BANK

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H. Swineford,

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boys should be given more time in schooling. I have never headd of any excessive whipping, nor were the hours of labor excessive. The boys worked seven and a half hours. I think there is no doubt that the boys are benefited by their stay at the school. I have a boy row in my employ, a former immate and I have never seen a more faithful worker and never missed an hour. I am told he goes to church twice on Sunday and even on Wednesday. I have four or five former immates now with me and they have not lost a day in their work, I think if these boys could be given employment at once after leaving the institution, 75 or 89 per cent, of them would become good men.

"I think they have a very remarkable set of officers there, humane, kind, hardworking and receiving a very small pay. I have a factory in Manchester now, having left the institution last June. I have no contract at the reformatory now and do not expect to renew a contract there. "There was a difference of opinion between Mr. Sampson and the doctor, about two years ago. The doctor was a typhoid physician and he had thirty-two patients down for typhoid fever. Mr. Sampson differed with him and made an examination and this was the reason that the doctor left. The boy who had chains on in bed, was classed as one of these typhoid fever patients. He behaved so well that he had been promised his discharge for Christmas and I promised him a suit of clothes while my partner had secured him a position, but at the end of November the boy ran away.

"The physician who had a difference was Dr. Gordon, of Richmond. Mr. Sampson never set up his opinion against that of the doctor, but those around there were of the opinion that the doctor made a mistake. Boys came in the hospital as typhoid fever patients who did not stay more than one or two days. They received a prescription at the hospital model in the hospital as typhoid fever patients who did not stay more than one or two days. They received a prescription at the hospital as typhoid fever patients who did not stay more

factory, because nearly all the boys went over to the hospital."

Major Stiles then resumed his testimony. In regard to the Southail boy, he said that ne had been in correspondence with his parents, who never intimated that the boy had been maitreated. "The worst boy we had," said Major Stiles, "was Schlagel. We placed him he southed that the borke to pleces; he then a tear him. He broke to pleces; he then the had a big plece of a critical many one who can the had a big plece of a critical many as the preferred against Mr. Sampson He was then whipped, and subdued him the stilling in high pands with the standard by the majority that he had not been whipped enough. The boy soon afterwards ran away. His case was the only one where a complaint was made in eight years, and since that time we have not used any more solitary cells.

"It is true our association has great powers, but they are necessary in order to manage that class of boys. I admit these powers are dangerous, but we have to have them to carry out our work. The only question is have these powers been abused, and where. The charge that the State is aiding a private corporate the people's to the taking care of insane people' to others who receive jailer fees wherever been abused, and where. The charge that the said to provide the provision is made for the taking care of insane people to there who receive jailer fees wherever the head of the code, where provision is made for the taking care of insane people to there who receive jailer fees wherever, the head of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Virginia, when plea in abatematic of the code of Vir

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THE EXPENSES.

"The greatest difficulty is as to the expenses. It is true the State pays us failor fees, but this money is spent to the very best advantage."

Mr. Bland, of King and Queen, desired to know whether Major Stiles could make any legislative recommendations and the latter replied that he would gladly do so at some future time, after these present charges had been disposed of. He could say that much, however, that he would not be willing to do anything further at the school, if the terms were limited to one year only.

not be willing to do anything further at the school, if the terms were limited to one year only.

When questioned by Mr. Churchman, of Augusta, Major Stiles said in many instances boys were taken into the Reformatory when they were too old and too hardened.

Upon a question asked by Dr. Winston Major Stiles said it did not work well to have a free school system at the institution, because it was not only the question of securing teachers, but the proper persons who can control the been sud this would certainly incur an additional expense. He did not think that the State was discriminating against boys who had never been committed, if boys were taken back who had been discharged as paroled. He did not think that boys were deprived of their liberty. If they were kept at the institution until twenty-one years old, because the State only stepped in to assume the parental right, which the parent had abdicated and was not able to assume the narrotal right, which the parent had abdicated and was not able to assume or carry out. There certainly was no pecuniary interest involved to those who are in charge of the institution.

The testimony on both sides was closed at 11:20 o'clock and the committee then went into executive session. At 11:20 o'clock and the committee again in executive session this morning to agree on a report.

VESTIBULE FRONTS.

Governor Tyler Signs the Bill Providing for the Same on Street-Cars.